HON'BLE SRI JUSTICE K.G. SHANKAR

M.A.C.M.A.No.413 of 2005

Date: 22.08.2012

Between:

B. Vonurappa,
s/o. Pedda Hussainappa,
r/o. Osuru Village, Pathikonda Mandal,
Kurnool District,
and another … Appellants

AND

V. Kondanna,
s/o. V. Sushanna,
r/o. Bhominipalli Village,
Panyam mandal, Kurnool District,
and 2 others … Respondents

HON'BLE SRI JUSTICE K.G. SHANKAR

M.A.C.M.A.No.413 of 2005

JUDGMENT:

This is a claimants' appeal. When Banagani Ganesh died in a vehicular accident, his parents laid claim under Sections 163-A and 166 of the Motor Vehicles Act, 1988 claiming compensation at Rs.4,50,000/- for the death of the deceased. The Motor Accidents Claims Tribunal-Principal District Judge, Kurnool (Tribunal, for short) awarded compensation at Rs.1,48,000/- together with interest at 9% per annum from the date of petition till deposit. Contending that the claimants are entitled to

compensation at Rs.4,50,000/-, the claimants preferred the present appeal.

2. The deceased was 25 years old at the time of his death. He was working as a car driver with the second respondent. He was paid remuneration of Rs.2,000/- per month.

3. On 26.02.2003, the deceased was driving the car bearing registration No.AP 21V 4392 from Nandyal to Kurnool. After crossing Orvakal, the offending lorry owned by the first respondent and insured with the third respondent bearing registration No.ATT 5336 approached from the opposite direction. The driver of the lorry was driven in a rash and negligent manner. The lorry hit the car. The deceased sustained serious injuries in the said accident. He was immediately shifted to Government General Hospital, Kurnool. On 01.03.2003, the deceased died on account of the injuries sustained by him in the accident. With these allegations, the parents of the deceased claimed compensation at Rs.4,50,000/-.

The first respondent-owner of the lorry and the second respondent-owner of the car remained *ex parte*. The third respondent-insurer of the lorry contended that the liability of the insurer was only to a tune of Rs.1,00,000/-. It further curiously contended that the owner and insurer of the car were necessary parties and the claimants shall be non-suited for not impleading them. Curious because the

owner of the car is the second respondent and the insurer of the lorry is the third respondent.

4. The claimants question the amount of compensation. As no appeal was preferred by the insurer, the liability of the insurer and the negligence on the part of the driver of the lorry as held by the Tribunal do not fall for consideration. Regarding compensation, Sri A. Jaya Sankara Reddy, learned counsel for the claimants primarily contended that the age of the deceased shall determine the multiplier and not the age of the parents even when the deceased was a bachelor. In the present case, the deceased was unmarried. He was 22 years old. However, as the second appellant-mother of the deceased was described to be as 48 years old, the Tribunal applied multiplier 13. The contention of the learned counsel for the claimants is that as the deceased was 22 years old, the highest multiplier i.e., multiplier 18 should have been applied for the present case. He placed reliance upon ***Amrit Bhanu Shali v. National Insurance Co. Ltd***[1]. In that case, the deceased was 26 years old unmarried person. The High Court applied multiplier 13 taking the age of the parents into consideration.

The Supreme Court held in para 17:

> "The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased

> whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation."

5. Thus, the Supreme Court took the view that the age of the parents cannot be taken for fixing the multiplier and that the age of the deceased as in the case of any other death shall determine the multiplier even if the deceased died as a bachelor. As the Supreme Court in unequivocal terms held that the age of the deceased alone shall determine the multiplier whether the deceased was a bachelor or a married person, I have no alternative but to determine the multiplier in terms of he age of the deceased. As the deceased was 22 years old at the time of his death as observed by the Tribunal, the relevant multiplier applicable is 18.

6. PW.2 is a retired Assistant Public Prosecutor. Apart from deposing that the accident was due to the rash and negligent driving of the offending lorry of the first respondent, he also deposed that the deceased was working under him and was earning Rs.2,000/- per month. There is no contrary evidence as the insurer did not choose to let in evidence. I, therefore, agree with the contention of the learned counsel for the claimants that the deceased was earning Rs.2,000/- per month as a driver. His annual income, therefore, was Rs.24,000/-. In view of ***Sarla Verma v. Delhi Transport Corporation***[2],

it would be just and proper to deduct half of the income of the deceased towards his personal and living expenses. If 1/3rd of the same is deducted, the amount would be Rs.12,000/-. As multiplier applicable is 18, if the annual income of the deceased is multiplied by 18, the amount would be Rs.2,16,000/-. The claimants shall be entitled to compensation at Rs.2,16,000/- towards loss of income and future expectancy of life. The claimants are entitled to compensation at Rs.5,000/- towards loss of estate. The claimants are also entitled to Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transport charges.

7. This is a case where the deceased did not die instantaneously or some time soon after the accident. He underwent treatment for two days from 26.02.2003 on which the accident occurred till 01.03.2003 on which date the deceased died. I agree with the contention of the learned counsel for the claimants that the deceased would have been entitled to compensation towards pain and sufferance had he been alive. However, where the deceased died, I am afraid that his dependants are not entitled to compensation towards pain and sufferance.

8. Accordingly, the compensation payable in the present case is

a) Compensation towards loss of income on future expectancy of life .. Rs.2,16,000/-

b) Compensation towards

loss of estate	..	5,000/-
c) Compensation towards funeral expenses	..	2,000/-
d) Compensation towards transport charges	..	1,000/-

Total	..	Rs.2,24,000/-
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9. Interest is payable only at 6% per annum at this amount. One of the directives of ***Sarla Verma*** is that a father of the deceased should not be computed as a dependant, while the mother of the deceased shall be so computed. The present claim was laid by both the parents of the deceased. In view of ***Sarla Verma***, I hold that the first appellant-first petitioner, as the father of the deceased, is not entitled to compensation. The entire awarded amount shall go to the second appellant-second claimant-second petitioner only.

10. The appeal accordingly is allowed in part. The second appellant is awarded compensation to a tune of Rs.2,24,000/- together with interest at 6% from the date of petition till deposit payable jointly and severally by respondents 1 and 3. The first and third respondents are jointly and severally liable to answer the claim. They shall deposit the awarded amount within ONE month from today. The claim of the first appellant is dismissed. After deposit, the second claimant shall be entitled to withdraw

Rs.1,00,000/- at the first instance. The balance shall lie in fixed deposit for a period of two years at the end of which the second claimant shall be entitled to withdraw Rs.75,000/-. The balance amount has to be invested in fixed deposit for a further period of two years at the end of which, the second claimant shall be entitled to withdraw the balance amount together with accrued interest and costs. There shall, however, be no order as to costs in this appeal.

K.G. SHANKAR, J

Date: 22.08.2012
lsn

[1] 2012 (6) Scale 1
[2] 2009 ACJ 1298